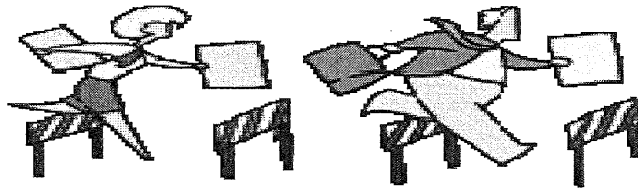




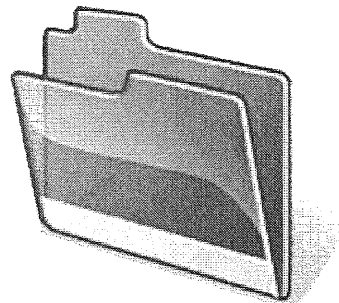
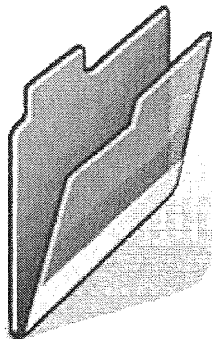
CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

12/19/2017
Agenda Item No. 3



ATTACHMENT RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION



Timothy A. Griswold
Attorney at Law

16 Corning Ave., Suite 136
Milpitas, CA 95035
(408) 550-5150
Fax: (408) 550-1893

December 18, 2017

City Clerk's Office

DEC 18 2017

RECEIVED

Via U.S. Mail

City of Milpitas
Attn: City Clerk
455 E. Calaveras Blvd.
Milpitas, CA 95035

Re: Response to the Appeal to be Heard by the Council on December 19, 2017 against the Grant of the Ismaili Center CUP

Dear Council Members and Mayor Tran:

The Ismaili Cultural Center is a community that has made the City of Milpitas its home for decades. Members of this community are extensively involved with volunteering and public service in Milpitas. They are a small-membership community group that mostly meets outside normal business hours in the early morning and late evenings throughout the week.

For a long time, they were located at Centre Pointe Drive, where they enjoyed a long-term lease. Unfortunately, they are being forcibly displaced at the end of their current lease term since their original site was rezoned and a housing development project was approved there. The housing project required the entire industrial complex to be demolished in order to make way for new residential houses. Had that not happened, they would not have moved from that site. Ever since the site was rezoned they have been searching for a suitable site to relocate. Recently, they identified a replacement location at 691 S. Milpitas Blvd. As their community has been deeply imbedded in the social and cultural fabric of Milpitas for decades, it would cause considerable hardship for them to move away from Milpitas.

The new assembly area at 691 S. Milpitas Blvd. occupies only 9000 sq. ft., or less than 10% of the building in which it is located.

This building is in an Industrial Zone, with a Zoning Description of M2. "Places of Assembly" have been listed as a "conditionally permitted" use for this type of zone under Table XI-10-7.02-1. Under XI-10-7.02, titled "Industrial Use Regulations," "conditionally permitted uses shall be permitted subject to the issuance of a Conditional Use Permit, in accordance with Subsection XI-10-57.04, Conditional Use Permits...of this Chapter."

As required, the Ismaili Cultural Center applied for a conditional use permit. After having been found to be in compliance with all the Industrial Zone Special Development and Performance Standards found in Subsection XI-10-7.04, their permit was approved by the Planning Commission with a majority vote, and they were granted a permit to enable them to begin using the premises for assembling.

The City of Milpitas' "Special Development Standards in All Industrial Zones" requires that an assembly hall cannot occupy more than 50% of a building. In their case, they will occupy less than 10%. They also required that the use of an assembly hall should not change the character of the industrial area by making exterior changes to the building. In their application, they have agreed to strictly adhere to this requirement and will not make any changes to the outside of the building indicative of the building being used for any non-industrial use. As required, they will also not be using external signage not in compliance with existing signage ordinance for the industrial area.

Despite the clear language that conditional permits "shall," or, in other words are "required" to be, issued when such conditions have been met, and this permit HAS already been approved under these regulations, Mr. Eric Clapp, from CTC Property, LLC has now appealed the permit approval.

Rebutting Legal Assumptions and Misstatements from Appeal

Zoning Laws are Not at Issue In This Case: the Only Issue is Whether the Requirements have Been Met for Conditional Use as an Assembly Area

In their appeal, CTC Property, LLC makes several assumptions and statements of law that do not seem correct. While not intending to go point for point, some of these points should be addressed.

CTC Property states that this site is under consideration for "conversion" to an assembly use. They also state that permitting the use of assembly next to their property would be an "incompatible use." The arguments misstate the applicable regulations and in fact seem to be arguing for a change in the zoning laws of their property and property adjacent to them. They make little to no arguments about why the special conditions required for such zones to be approved for places of assembly have not been met in this case.

Due to US Constitutional Protections, the City Council Should Not Tread the Slippery Slope of Deciding What Type of Assemblies are Allowed

Far more concerning is the reasoning CTC Property applies in the last paragraph on the first page and first paragraph on the second page. Therein, they state that they "are very concerned that the *assembly use contemplated* by the application will interfere with the professional business environment surrounding their property." They also directly state that they are strongly opposed to "allowing religious uses in the industrial zones in Milpitas."

In short, CTC Property does NOT seem to have a problem with the fact that this area can be used for assembling, but seem to be concerned with the *particular type* of assemblies the Ismaili Cultural Center intends to hold. This is a slippery slope that should be treaded on very carefully by the City, as a ruling about the type of use can easily run afoul of the Ismaili Cultural Center's guaranteed fundamental rights of free speech, assembly, and religion under the 1st Amendment and the Equal Protection Clause of the 14th Amendment of the US Constitution. When fundamental rights are being infringed by governmental law or policy, such actions require compelling governmental interest, and must be narrowly tailored and use the least restrictive means to achieve such interest.

Rebutting Factual Assumptions

Apart from the strong legal arguments, mentioned above, CTC Property seems to make several factual arguments that also seem very tenuous, or at the very least seem highly subjective. For instance, they argue that allowing "religious uses," as the Ismaili Cultural Center intends, would be an "incompatible use [that] will change the perception of the area in the minds of potential tenants and users." They also make an argument that their location next to CTC Property's buildings would cause a burden due to the potential future use of hazardous materials in the area.

There will likely be No Adverse Impact from Assemblies as Conditionally Permitted

The Ismaili Cultural Center's previous location happened to be next to my former law office at 1578 Centre Pointe Drive. Due to the timing of their assemblies, at night and on the weekends, they had absolutely no negative impact on my business. In fact, I didn't even know they were there. If anything, I can surmise that there might have been some positive impact on my business due to increased foot traffic walking past my office. More importantly, given the very nature of the City's conditional permit, with several conditions in place about signage, etc., it seems highly unlikely that the Ismaili Cultural Center will have any adverse impact on the surrounding businesses in its new location.

CTC Property also makes an argument that the Ismaili Cultural Center's assemblies will increase their potential burden in dealing with possible future hazardous wastes. Given the already strict and onerous laws governing the use, disposal, transportation, and notification of hazardous waste, such as the Resource Conservation and Recovery Act (RCRA), and the Emergency Planning and Community Right-to-Know Act (EPCRA), to name a few, as well as the fact that there are many people already working in such locations on a daily basis, it is highly unlikely, however, that Ismaili Cultural Center will have any additional impact in terms of increased costs, etc. The fact that their proposed plan was already analyzed under CEQA and was found to be exempt solidifies this conclusion.

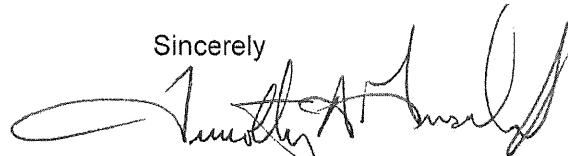
The other points that CTC Property make about the "community and neighborhood identity" are highly subjective, and could very well militate in Ismaili Cultural Center's favor.

Summary

In summary, due to the facts that the existing zoning ordinances that conditionally permit "Places of Assembly" require approval when all the special conditions have been met, that such conditions have already been found to have been met in the instant case, and that the Council may not discriminate against the particular types of assemblies under the US Constitution absent a compelling governmental interest with a narrowly tailored and least restrictive policy, the Council's ruling should already be clear.

The Ismaili Cultural Center's urges the council to follow the clear laws in place, deny the appeal, and allow them to enjoy their Constitutionally-Protected rights of assembly, speech, and religious practice. To the extent CTC Property, LLC seems to be lobbying for a change in the existing zoning ordinances, this is the incorrect manner and forum to do so.

Sincerely

A handwritten signature in black ink, appearing to read 'Timothy A. Griswold', written over a horizontal line.

Timothy A. Griswold
Attorney at Law